

1 the right thing and that I would take these cases  
2 far more seriously than he did. There's no  
3 question. I don't deny that.

4 MR. NACHWALTER: Let me -- now that you're  
5 a sitting judge -- and I hope you don't have another  
6 campaign, because I have friends who are judges who  
7 do run, and I know it's a pain in the neck.

8 JUDGE KINSEY: No.

9 MR. NACHWALTER: But let's assume you did  
10 and somebody ran against you who is not a judge and  
11 they wanted to talk about pending cases, be it in  
12 front of you or somebody else. What would you do?  
13 Would you get into it with them if they wanted to  
14 talk to you about pending cases? Or would you say,  
15 "I don't think it's proper to talk about pending  
16 cases"?

17 JUDGE KINSEY: I want to be careful how I  
18 answer you, because I know this is very important,  
19 and I want to make sure that I answer it fully and I  
20 answer it honestly from my heart.

21 I don't think that there are any pending  
22 misdemeanor cases that are going to be of  
23 discussion. I really just don't see it. The cases  
24 that people want to talk about, the cases that  
25 generate discussion, are the felony cases that we

1 see on a bond hearing. Those cases will never come  
2 before us. It's not going to happen. We have  
3 circuit judges that handle this. It's strictly a  
4 bond decision.

5 My understanding from reading the canon is  
6 that if a candidate were to challenge my decision on  
7 one of these cases that I could respond.

8 Now, what I know now from being a sitting  
9 judge, from going through the judges' college and  
10 having the benefit of basically the conference that  
11 we went to in January, four weeks of listening to my  
12 new colleagues and learning more about the new rules  
13 and canons, I would call the advisory committee or  
14 send off a telegram and say, "Please help me and  
15 tell me what to do." Because I don't want to screw  
16 up.

17 It's been a tremendous learning process,  
18 and I know I've made mistakes, and I don't want to  
19 make mistakes. What scares me -- and you bring up  
20 the idea of a campaign -- is that people might take  
21 my brochures and say, "You promised to be tough,"  
22 and say "Where is it?"

23 Because on these misdemeanor cases, what  
24 I'm doing primarily is giving people a huge chance  
25 up front. If they take responsibility at first

1 appearance or at arraignments, you know, on  
2 misdemeanors -- we're talking about misdemeanors  
3 here; we're not talking about rapes and armed  
4 robberies, the things I've been dealing with for the  
5 last, you know, three or four years -- primarily I'm  
6 giving them fines and telling them if they don't get  
7 it done by a date they tell me they can get it done  
8 by -- you know, for example, I would say, "You know,  
9 Mr. Nachwalter, I'm going to withhold adjudication  
10 because you don't have a prior record, but I'm  
11 going to impose court costs of \$136. How long will  
12 it take to you pay those?"

13 And you would tell me, "Oh, I need at  
14 least four weeks."

15 "Well, what if I give you two months? Can  
16 you get it done by then?"

17 And you would say, "Oh, yeah, absolutely."

18 "Are you sure?"

19 "Oh, yeah."

20 I say, "Okay. Because I'm going to put 30  
21 days at the end of that. If you don't have it done  
22 by then, you're going to do 30 days. You have to  
23 take responsibility for your actions. Do you  
24 understand that?"

25 So the criticism that I'm afraid I may

1 face four years from now --

2 MR. NACHWALTER: Someone will run against  
3 you and say "She's soft on crime"?

4 JUDGE KINSEY: "She's soft on crime."

5 But that's what I feel is appropriate if  
6 someone doesn't have a prior record. It's just that  
7 when they do have a prior record, I feel like they  
8 should be afforded the accountability that they  
9 deserve having a serious prior record, for doing the  
10 same -- I was watching third-offender DUIs get ten  
11 days house arrest. You know, it broke my heart. It  
12 was wrong. That's not happening with me.

13 But, yeah, I could face criticism. And I  
14 would get help.

15 MR. NACHWALTER: Well, that's what I  
16 wanted you to understand, and that's what I was  
17 trying to say at the beginning, is your abilities as  
18 a judge or what you've done as a judge or what Judge  
19 Green did as a judge is not the subject of this.  
20 The only thing I'm focused on, at least -- and I  
21 think the commission is -- is whether or not some  
22 things were said and it's in the campaign literature  
23 were not proper comments. That's the total focus, I  
24 think, of this inquiry.

25 JUDGE KINSEY: Okay.

1                   THE CHAIR: I have some questions,  
2 but I'd rather defer to Leonard, who we skipped  
3 over, and then to Mr. Barkin and Mr. Scriven.

4                   DR. HABER: Judge, would you say,  
5 considering all the preparation, the conferences  
6 you've had with your husband, thinking about this,  
7 going over it in retrospect, that perhaps some of  
8 your literature could be characterized as a little  
9 intemperate, in retrospect?

10                  JUDGE KINSEY: And, you know, we've only  
11 had two conferences, which is part of the reason why  
12 I came into this very nervous, because I didn't know  
13 what he was going to say exactly. In fact, last  
14 night, he was typing up -- he's a typical lawyer; he  
15 waits until the last minute to do something. And I  
16 guess being the wife didn't make it any easier. He  
17 certainly didn't start it any earlier.

18                  There are two issues here. One, the  
19 public has a right to know what's going on, and they  
20 have a right to make a decision; if Florida is  
21 going to allow elected judges, then the people have  
22 a right to be educated about things. Are there  
23 things that I would have done differently in  
24 retrospect? Certainly. Certainly.

25                  DR. HABER: Would you -- in retrospect,

1 looking back, can you in your mind understand they  
2 could easily being characterized as intemperate or a  
3 bit excessive?

4 JUDGE KINSEY: And my husband will  
5 probably kill me for saying this --

6 DR. HABER: Probably will.

7 JUDGE KINSEY: -- yeah, I do. And you get  
8 caught up in the campaign.

9 DR. HABER: In the heat of it, get  
10 passionate.

11 JUDGE KINSEY: And there are things I wish  
12 that had been worded differently. There are things  
13 I wish I had caught that I didn't.

14 DR. HABER: Can I specifically bring to  
15 your attention two words that caught my eye?

16 JUDGE KINSEY: Uh-huh.

17 DR. HABER: Please bear in mind I'm not a  
18 judge, I'm not a lawyer, although I've had 30 years  
19 of experience with lawyers, judges, courts, and the  
20 process, or more.

21 The two words that caught my eye in the  
22 campaign literature regarding Mr. Heller are the  
23 words "thug" and "punk." And as I read them, I  
24 thought to myself if I were a judge or if I were  
25 watching another judge in court and somebody came up

1 to characterize that -- I don't care if it's a  
2 prosecutor or a defense lawyer -- and said "That  
3 punk, that thug" -- now, this is prior to  
4 conviction, not being convicted of being a thug or a  
5 punk -- I believe that if an objection was raised,  
6 it would probably be sustained by a temperate judge  
7 who would say, "Hey, this is called character  
8 assassination. This is called depiction of people  
9 by putting labels on them. You can't do that. I  
10 mean, just state -- just state the facts."

11 I think that this possibly exemplifies  
12 possibly the sense of urgency you had about  
13 replacing this judge that you felt wasn't doing the  
14 right thing. And that exemplifies what Mike  
15 Nachwalter is talking about about crossing the line  
16 and getting a little bit over-enthusiastic to where  
17 it might be okay in some other arena, but this  
18 probably wouldn't be permitted in a courtroom, and  
19 you want to be a judge. So that's why I  
20 characterize it as perhaps excessive and a bit  
21 intemperate.

22 And I'd like you to reflect back on those  
23 two words, "thug" and "punk," and would you use them  
24 again in that way if you ran another campaign?

25 JUDGE KINSEY: No, I probably wouldn't.

1     There are other ways that could be said. You know,  
2     again, I hate to keep falling back on this, but when  
3     you hire professionals to help you -- and you  
4     probably won't believe this, but that is a much more  
5     temperate brochure than what originally came  
6     through. That's probably about the fifth draft, at  
7     least the fifth draft, of that particular brochure.

8             DR. HABER: I understand that. I've been  
9     through campaigns myself. I've run for office.

10            JUDGE KINSEY: Then you understand.

11            DR. HABER: I know what it is. But the  
12     ultimate responsibility rests with the candidate.

13            JUDGE KINSEY: Is mine, yeah.

14            DR. HABER: And in the instance of  
15     judicial candidates, that responsibility is far more  
16     onerous than for anybody else. And that's all that  
17     I think Mr. Nachwalter and everybody else is saying.

18            JUDGE KINSEY: Yeah.

19            DR. HABER: Well, I have no other  
20     questions. Thank you.

21            THE CHAIR: Ms. Heffner? Can I jump  
22     over Mr. Barkin and Mr. Scriven just for  
23     Ms. Heffner's one question, and then we'll move --

24            MS. HEFFNER: Actually, mine's been  
25     answered.